माननीय छत्तीसगढ़ उच्च न्यायालय ,बिलासपुर छत्तीसगढ़

दांडिक पुनरीक्षण प्रकरण क्रमांक 414 2003

पुनरीक्षणकर्ता /अनावेदक ::-शिवनारायण यादव आयु 28साल पिता स्व0श्री गोरेलाल जाति यादव निवासी ग्राम ढारंग तहसील व थाना चांपा जिला जांजगीर चांपा छ0ग0

विरूध्द

उत्तरवादीगण/आवेदिकागण ::-(1)श्रीमती लक्ष्मीबाई पति शिवनारायण आयु 25साल
(2)कुमारी रीतू आयु 6साल पिता शिवनारायण यादव
(3)ऋषभ आयु 3साल पिता शिवनारायण यादव
(4)रिशू आयु 1साल 4माह पिता शिवनारायण यादव
क्रमांक 2से 4 नाबालिक वली माता श्रीमती लक्ष्मीबाई पति शिवनारायण सभी जाति यादव निवासी बालको सेक्टर-क्वार्टर नंबर 65 टाईप ए थाना बालको ,तहसील व जिला कोरबा छ0ग0

3337/15
Filed on 28.8.15
by Shri Hanuman Ld. Agrawal
Advocate
R. to D.R. (J)
28/8/15

पारित आदेश दिनांक 07.07.2003
प्रतिलिपि आवेदन दिनांक 08.07.2003
प्रतिलिपि तैयार दिनांक 16.08.2003
पुनरीक्षण हेतु अनुज्ञात समयावधि 90दिवस
पुनरीक्षण विहित 90दिवस की कालावधि में प्रस्तुत है।

पुनरीक्षण अन्तर्गत धारा 397, 401 दंड प्रक्रिया संहिता 1973

न्यायालय श्रीमान न्यायिक दंडाधिकारी प्रथम श्रेणी जांजगीर (पीठासीन श्री संजय कुमार सोनी)द्वारा विविध दांडिक प्रकरण क्रमांक 29/2002लक्ष्मीबाई एवं 3अन्य बनाम शिवनारायण में पारित आदेश दिनांक 07.07.2003 के विरूध्द पुनरीक्षण

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Attached
H.P. Agrawal

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक Cri. Rev. No. 414/2003 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

06/12/2004

Shri Hanuman Prasad Agrawal, Counsel for the petitioner

Shri Awadh Tripati, Counsel for the respondents.

Heard on I.A.No.3542/2004 to which Counsel for the respondents has no objection.

Considered. Prayer is allowed.

Counsel for both the parties pray that all the documents and papers are available, therefore, the matter may be heard finally and decided.

Prayer is allowed.

It is not disputed that respondent No.1 is a legally wedded wife of petitioner and respondents No. 2, 3 and 4 are the legitimate minor children of the petitioner. All the respondents made an application under Section 125 of the Cr.P.C., for grant of maintenance against the petitioner and also made an application for grant of ad-interim maintenance. Learned trial Court allowed the application for grant of interim maintenance and granted ad-interim maintenance in favour of respondents directing the petitioner to pay Rs.200/- per month to respondent No.1 and Rs.100/- per month to each of the respondents No. 2, 3 and 4. That order was challenged in revision and the said order was affirmed by the Additional Sessions Judge, Janjgir vide his order dated 23/11/2002 passed in Criminal Revision No.165/2002. In the meantime, petitioner succeeded in getting a decree under Section 9 of the Hindu Marriage Act in his favour and taking shelter of that decree he again filed an application under Section

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

127 (2) of the Cr.P.C., for modification of the ad-interim maintenance order. The decree passed by Civil Court in Civil Suit No.35-A/2000 on 19/08/2002 has been challenged by Smt. Laxmi Bai, respondent No.1 and the same is pending for hearing before this Court.

Under Section 127 (2) of the Cr.P.C., if as a result of any decision made by any Competent Court the criminal Court comes to the conclusion that any order passed under Section 125 of the Cr.P.C., requires to be cancelled or varied, he is empowered to do the same accordingly. Learned trial Court came to the conclusion that so far as respondents No. 2, 3 and 4 are concerned, the decree is not passed against these respondents and so far as respondent No.1 is concerned, learned trial Court came to the conclusion that appeal is pending and therefore, the decree passed by the Additional District Judge in Civil Suit No.35-A/2000 is not final and on these grounds the learned trial Court rejected the application

In Civil Suit No.35-A/2000 decree passed by the Additional District Judge, Janjgir on 19/08/2002, directs respondent No.1 to restore conjugal rights and the same order has been challenged before this Court which is pending for hearing. It is settled law that when Civil Appeal is pending then it is to be treated as continuation of the proceeding. Therefore, till the final adjudication between the petitioner and respondent No.1 does not come to existence, petitioner under Section 127 (2) of the Cr.P.C., is not entitled to obtain any recourse regarding modification of the

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

interim maintenance order passed in favour of respondent No.1 and against him. So far as respondents No. 2, 3 and 4 are concerned, who have been allowed a meager sum of Rs.100/- per month from the petitioner, there is no order from any of the Civil Court against them, therefore, interim maintenance granted to them was not liable to be modified or altered under Section 127 (2) of the Cr.P.C. Considering the facts and circumstances of the case, the learned trial Court did not commit any irregularity or illegality and the impugned order does not call for any interference.

The revision is, therefore, dismissed.

In the light of the aforesaid order, M.Cr.P.No.3682/2003, I.A.Nos. 4617/2004 and 2428/2004 stand disposed of.

The First Appeal No.111/2002 linked with this Criminal Revision, be listed before appropriate Bench.

Sd//-
V.K.Shrivastava
Judge